

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sally Lynn Edmonds	Team: Squad #7	CCRB Case #: 201701257	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/11/2017 7:37 AM	Location of Incident: Crown Heights-Utica Avenue Subway Station	Precinct: 77	18 Mo. SOL 8/11/2018	EO SOL 8/11/2018	
Date/Time CV Reported Sun, 02/12/2017 5:18 PM	CV Reported At: IAB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 02/16/2017 1:23 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Baror	16316	957359	TB DT32

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Corey Hughes	12911	960690	TB DT32

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Baror	Abuse: Police Officer Michael Baror stopped § 87(2)(b)	
B.POM Michael Baror	Abuse: Police Officer Michael Baror threatened to arrest § 87(2)(b)	
C.POM Michael Baror	Discourtesy: Police Officer Michael Baror spoke discourteously to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint with the Internal Affairs Bureau (IAB) on February 12, 2017 (Board Review 01; 14). On February 16, 2017, he came to the CCRB as a walk-in and filed a duplicate complaint (Board Review 02).

On February 11, 2017, at 7:37 a.m., § 87(2)(b) swiped his metro card through the turnstiles at the Crown Heights-Utica Avenue subway station in Brooklyn and walked down two flights of stairs to the Manhattan-bound platform. PO Michael Baror and PO Corey Hughes, both of Transit District 32, approached § 87(2)(b). PO Baror asked § 87(2)(b) for his ID and told him he was being stopped because he matched a description of someone who jumped the turnstiles (**Allegation A**). § 87(2)(b) initially refused to provide his ID. PO Baror threatened to arrest § 87(2)(b) for refusing to provide his ID (**Allegation B**). § 87(2)(b) then provided his ID and metro card to PO Baror. § 87(2)(b) stated that his brother, Jean § 87(2)(b) was a Sergeant with the NYPD; to which PO Baror allegedly responded, “I don’t give a shit” (**Allegation C**). PO Baror handcuffed § 87(2)(b) and the officers walked § 87(2)(b) to the token booth, where they checked his metro card, found that it had been swiped, and removed the handcuffs. § 87(2)(b) left the location without being arrested or summonsed.

Video footage was obtained from the Metropolitan Transit Authority (MTA) train station and from § 87(2)(b) who recorded a portion of the incident on his cell phone. The MTA footage shows § 87(2)(b) lawfully entering the train station, and the cell phone footage shows a portion of the interaction between § 87(2)(b) and PO Baror, where PO Baror is heard threatening to arrest § 87(2)(b). For the full surveillance video, reference Board Reviews 17 - 24, and for the summary of § 87(2)(b)'s cell phone video, see Board Review 25. The relevant portions of the respective videos are embedded below.



201701257_20170216_1445_DM.3gp

Cell phone video



201701257_20170316_1641_DM.mp4

Surveillance video

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- On March 31, 2017, the New York City Comptroller’s Office notified the CCRB that § 87(2)(b) had not filed a Notice of Claim (Board Review 03).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED] (Board Review 04).

Civilian and Officer CCRB Histories

- This is the first complaint involving § 87(2)(b).
- PO Baror has been a member of the NYPD for two years. There are three prior allegations against him, stemming from one complaint. The complaint was closed as complainant uncooperative § 87(2)(g).

Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

Allegation A – Abuse of Authority: Police Officer Michael Baror stopped § 87(2)(b)

It is undisputed that PO Baror stopped § 87(2)(b). It is further undisputed that after stopping § 87(2)(b), PO Baror handcuffed him, brought him to the token booth, checked his metro card to find that it had been swiped, and then removed the handcuffs.

§ 87(2)(b) provided a statement to IAB, followed by a sworn statement to the CCRB (Board Review 01; 14; 02). § 87(2)(g) § 87(2)(b) stated that he swiped through the turnstiles shortly before 7:45 a.m., at which time PO Baror approached him and asked for his ID. PO Baror said, “Someone jumped the turnstile and I want to make sure it was not you,” and “they told me it was someone with a red jacket.” § 87(2)(b) provided his metro card so PO Baror could check that it had been swiped, but PO Baror insisted on seeing § 87(2)(b)'s ID. § 87(2)(b) initially refused, but later complied and provided his ID. § 87(2)(b) is a 5’11” tall, 240-pound black male who was wearing a burgundy jacket with a “Big Bus” logo on it at the time of this incident (Board Review 26).

PO Baror stated that at 7:45 a.m., he was standing about 25 feet from the turnstiles, in front of the restroom door, and was observing civilians with his partner, PO Hughes, when he noticed a 5’8” to 5’10” tall, heavyset black male in a brown jacket with a bus logo step over the turnstile and enter the subway system without paying (Board Review 06). PO Baror turned his head to alert PO Hughes of what he saw, and when he turned back, he had lost sight of the suspect. PO Baror scanned the crowd and observed a 5’8” to 5’10” tall, heavyset black male wearing a brown jacket with a bus logo, identified by the investigation as § 87(2)(b). PO Baror believed him to be the suspect. He attempted to call out to § 87(2)(b) but § 87(2)(b) was wearing headphones and did not respond. PO Baror and PO Hughes then followed § 87(2)(b) to the Manhattan-bound platform where they stopped him and requested his ID and metro card.

PO Hughes stated that he was stationed near the turnstiles with PO Baror when PO Baror alerted him that he had seen a man in a red jacket jump the turnstiles (Board Review 07). He followed PO Baror to the Manhattan-bound platform, where PO Baror pointed out § 87(2)(b). The officers approached § 87(2)(b) and PO Baror asked for his ID.

MTA surveillance footage from the Crown Heights-Utica Avenue subway station was obtained by the investigation. The footage shows that at 7:37 a.m., a black male with a medium to heavy build in a burgundy jacket with a “Big Bus” logo on the back, identified by the investigation as § 87(2)(b), approaches the turnstiles with what appears to be a wallet in his hand. As he nears the turnstiles, he pauses in front of the turnstile and is then seen using his right hand to make a swiping motion before walking through the turnstile. While walking through, the bar moves to allow him to pass through. Due to § 87(2)(b)'s body obstructing the slot in the turnstile, § 87(2)(b)'s actual metro card is not seen being swiped (Board Review 08).

PO Baror stated that § 87(2)(b) refused to provide his ID and that he informed him that he could be arrested for this reason (Board Review 06). PO Baror further stated that he could have arrested § 87(2)(b) for refusing to follow an order or for disorderly conduct. § 87(2)(b) was “yelling and screaming,” and that there was a crowd on the platform that yelling that the officers were abusing their authority. He stated that these individuals, he could not specify how many, were standing a few feet away. Nobody was physically intervening and PO Baror and PO Hughes did not have to give those individuals any commands to get away. § 87(2)(b) cursed after his handcuffs were removed, but did not use profanity prior to that. Upon viewing the cell phone video footage of the incident, PO Baror explained that the bystanders were not depicted in the video but maintained that they were present.

PO Hughes stated that § 87(2)(b) refused to provide his ID and metro card (Board Review 07). A crowd gathered and people were turning around and observing the interaction because § 87(2)(b) was irate. PO Baror and § 87(2)(b) were arguing, but PO Hughes did not recall whether PO Baror threatened to arrest § 87(2)(b). Upon viewing the cell phone video, PO Hughes explained that civilians had gathered around the incident, but they were not pictured in the video, as a train had just departed the station.

The cell phone video provided by § 87(2)(b) which is 50-seconds long, shows PO Baror stating to § 87(2)(b) “You’re basically refusing, so I’m going to have to place you under.” § 87(2)(b) raises his voice while arguing with the officers. In the video, the train platform appears to be virtually empty. Two civilians are seen walking past the officers at a distance, but they do not stop or slow down as a result of this incident. No bystanders are visible during the course of the 50-second video and no voices other than that of § 87(2)(b) PO Baror and PO Hughes are heard. The officers do not at any point address another civilian.

The refusal to answer questions or produce identification during the course of a stop does not establish probable cause for arrest. If a person stopped refuses to identify himself, the officer should not continue to detain that person if the investigation is complete and there is no probable cause to make an arrest. NYPD Patrol Guide, Section 212-11 (Board Review 09).

A person is guilty of disorderly conduct when he creates a risk of public inconvenience, annoyance or alarm by making unreasonable noise or using abusive or obscene language, or obstructing pedestrian traffic. NY Penal Law 240.20 (2)(3)(5) (Board Review 27).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

§ 87(4-b) § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Squad: 07

Investigator: _____
Signature

_____ Lynn Edmonds _____
Print Date

Squad Leader: _____ Diana Townsend _____
 Title/Signature Print Date

Reviewer: _____

Title/Signature Print Date